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DALLAS, TX 75380				
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/678,190

**Applicant(s)**

KELLY ET AL.

**Examiner**

MICHAEL E. BUTLER

**Art Unit**

3653

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 03 March 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) 17-21 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-13 and 16 is/are rejected.
- 7) ☐ Claim(s) 14 and 15 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Election/Restriction***

1. Applicant's election of invention I with traverse of the restriction requirement in on 8/11/08 of the restriction requirement of 7/10/08 is acknowledged and made final.
2. Claims 17-21 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claim(s) 1, 2,3,4, 5, 6, 7, 8, 9, 10, 11, 12, is/are rejected under 35 U.S.C. 103(a) as being unpatentable over Childers et al. 2890813 in view of Takamura et al. 6168047 wherein the former discloses:

(Re: cl 1,2,10) Column walls (25,26) defining a stack area (11), Oscillator75 ,  
Adjustable bail cap 81

(Re: cl 1,2, 10) first staging and second staging areas in product retention areas, the first staging regions retains a first product container and the second staging region simultaneously retains a second product container behind the first product container  
( at 80 in fig 3 )

(Re: cl 4) arcuate in cross section (81 fig 3, slot 78 also arcuate in cross section )

(Re: cl 8) intermediate position is asymmetrical (asymmetric from side axis )

(Re: cl 6, 12) oscillator has Top bottom and opposing end plates 77

and the latter discloses any elements not inherently taught by the former including:

(Re: cl 1, 2, 10) A cabinet ( 1 ), Cabinet door (2) pivotly attached to the cabinet

(Re: cl 3) bail cap rotatably attached to oscillator (20 pivots about 21)

(Re: cl 4) intermediate portion is arcuate in cross-section (the spring nature of element 20 will flex to arcuate shape when under load)

(Re: cl 5) Bail cap has an adjustment element (30)

(Re: cl9) cap end portions snap fit to oscillator (c4 L 1-3; 21 about 20)

(Re: cl 15) angled delivery chute 4

It would have been obvious at the time of the invention for Childers et al. to substitute the sliding door with a pivoting access door to gain greater access to the inside of the machine for repair and maintenance and faster loading as taught by Takamura et al.. It would have been obvious at the time of the invention for Childers et al. to rotatably attach a cap to the oscillator to automatically adjust for different size dispense as taught by Takamura et al.. It would have been obvious at the time of the invention for Childers et al. to use a flexible cap to flex into an arcuate shape to reduce stress on the components and automatically adjust for varying size dispense as taught by Takamura et al.. It would have been obvious at the time of the invention for Childers et al. to snap fit the cap to the end of the oscillator for ease of assembly and replacement of a pivoting component as taught by Takamura et al..

5. Claim(s) 1, 2, 3, 5, 8, 9 , 10, 11, 16 is/are rejected under 35 U.S.C. 103(a) as being unpatentable over Cook 6431398 in view of Takamura et al. 6168047 wherein the former discloses :

(Re: cl 1,2,10) A cabinet ( 1 ),

Column walls (15) defining a stack area (13), Oscillator 26

(Re: cl 1,2, 10) first staging and second staging areas in product retention zone, the first staging regions retains a first product container and the second staging region simultaneously retains a second product container behind the first product container

(c5 L 26-37)

(Re: cl 8) intermediate position is asymmetrical (asymmetric from side axis )

(Re: cl 11) first staging region offset from second staging region (c5 L 26-37)

(Re: cl 16) oscillator adapted to retain two containers in each of first and second staging regions (c5 L 26-37)

and the latter discloses any elements not inherently taught by the former including:

(Re: cl 1,2,10) Cabinet door (2) pivotly attached to the cabinet , adjustable cap attached to oscillator 20

(Re: cl 3) bail cap rotatably attached to oscillator (20 pivots about 21)

(Re: cl 4) intermediate portion is arcuate in cross-section (the spring nature of element 20 will flex to arcuate shape when under load)

(Re: cl 5) Bail cap has an adjustment element (30)

(Re: cl9) cap end portions snap fit to oscillator (c4 L 1-3; 21 about 20)

It would have been obvious at the time of the invention for Cook et al. to have an interior access pivoting access door to gain access to the inside of the securable machine for repair and maintenance and faster loading as taught by Takamura et al.. It would have been obvious at the time of the invention for Cook et al. to rotatably attach a cap to the bail oscillator to automatically adjust for different size dispensate as taught by Takamura et al.. It would have been obvious at the time of the invention for Cook et al. to use a flexible cap to flex into an arcuate shape to reduce stress on the components and automatically adjust for varying size dispensate as taught by Takamura et al.. It would have been obvious at the time of the invention for Cook et al. to snap fit the cap to the end of the oscillator for ease of assembly and replacement of a pivoting component as taught by Takamura et al..

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6. Claim(s) 1, 2, 3, 4, 6, 5, 7, 8, 10, 11, 12, 13 is/are rejected under 35 U.S.C. 103(a) as being unpatentable over Childers et al. 2890813 in view of Suzuki 651380 wherein the former discloses :

(Re: cl 1,2,10) Column walls (25,26) defining a stack area (11), Oscillator75 ,  
Adjustable bail cap 81

(Re: cl 1,2, 10) first staging and second staging areas in product retention zone, the first staging regions retains a first product container and the second staging region simultaneously retains a second product container behind the first product container  
( at 80 in fig 3 )

(Re: cl 4) arcuate in cross section (81 fig 3, slot 78 also arcuate in cross section )

(Re: cl8) (2) intermediate position is assymetrical (asymmetric from side axis )

(Re: cl 6, 12) oscillator has Top bottom and opposing end plates 77

and the latter discloses any elements not inherently taught by the former including:

(Re: cl 1,2,10) A cabinet (2 ), Cabinet door (c5 L 62) pivotly attached to the cabinet  
(standard mounting practice for this type housing)

(Re: cl 5) Bail cap has an adjustment element (30)

(Re: cl 13) plurality of notches at each staging area (between ribs 21a and 31)

It would have been obvious at the time of the invention for Childers et al. to control interior access with a pivoting access door to gain greater access to the inside of the machine for repair and maintenance and faster loading as taught by Suzuki. It would have been obvious at the time of the invention for Childers et al. to rotatably attach a cap to the oscillator to automatically adjust for different size dispensate as taught by Suzuki. It would have been obvious at the time of the invention for Childers et al. to have a plurality of terraced notches extending from the bottom plate to save weight as taught by Suzuki. It would have been obvious at the time of the invention for Childers et al. to have a plurality of terraced notches extending from the bottom plate to save weight as taught by Suzuki. It would have been

obvious at the time of the invention for Childers et al. to have a plurality of terraced notches extending from the bottom plate to save weight as taught by Suzuki.

7. Claim(s) 1, 2, 3, 4, 5, 6, 8, 10, 12, 13, 16 is/are rejected under 35 U.S.C. 103(a) as being unpatentable over Cook 6431398 in view of Suzuki 6561380 wherein the former discloses :

(Re: cl 1,2,10) A cabinet 1 , Column walls (15) defining a stack area (13), Oscillator 26

(Re: cl 1,2, 10) first staging and second staging areas in product retention zone, the first staging regions retains a first product container and the second staging region simultaneously retains a second product container behind the first product container

(c5 L 26-37)

(Re: cl 8) intermediate position is asymmetrical (asymmetric from side axis )

(Re: cl 11) first staging region offset from second staging region (c5 L 26-37)

(Re: cl 16) oscillator adapted to retain two containers in each of first and second staging regions (c5 L 26-37)

and the latter discloses any elements not inherently taught by the former including:

(Re: cl 1,2,10) a Cabinet door (c5 L 62) pivotly attached to the cabinet (standard mounting practice for this type housing)

(Re: cl 3) bail cap rotatably attached to oscillator (34 via plates 36)

(Re: cl 4) intermediate portion is arcuate in cross-section (33 plus 37 assembled combination)

(Re: cl 5) Bail cap has an adjustment element (30)

(Re: cl 13) plurality of notches at each staging area (between ribs 21a and 31)  
adjustable cap attached to oscillator 20

It would have been obvious at the time of the invention for Cook et al. to have an interior access pivoting access door to gain access to the inside of the securable machine for repair and maintenance and faster loading as taught by Suzuki. It would have been obvious at the time of the invention for Cook et al. to rotatably attach a cap to the bail oscillator to automatically adjust for different size dispensate as taught by Suzuki. It would have been obvious at the time of the invention for Cook et al. to use a bail cap adjustment element to accommodate different size

dispensate in the machine as taught by Suzuki. It would have been obvious at the time of the invention for Cook et al. to have a plurality of terraced notches extending from the bottom plate to save weight as taught by Suzuki.

It would have been obvious at the time of the invention for Cook et al. to use a flexible cap to flex into an arcuate shape to reduce stress on the components and automatically adjust for varying size dispensate as taught by Takamura et al.. It would have been obvious at the time of the invention for Cook et al. to snap fit the cap to the end of the oscillator for ease of assembly and replacement of a pivoting component as taught by Takamura et al..

***Response to Amendments/Arguments***

8. Applicant's amendment was effective in overcoming the indefiniteness rejections to claims 14-15. Applicant's amendment to claim 2 was effective in overcoming the rejection evidenced by Mille 3862704 in view of Takamura et al..

The applicant's amendments and arguments have been fully considered but they are unpersuasive in overcoming the rejections. Applicant's new limitations to claims 1 and 10 are purely functional limitations in an apparatus claim. As the device is capable of the functional behavior added in the latest amendment, the apparatus claim limitations are met per MPEP 2114. It is possible for the references to simultaneously retain the first container at the first staging area and the second container at the second staging area.

The applicant's arguments have been fully considered but they are unpersuasive in overcoming the remaining rejections to independent claim 2. As Childers and Cook have a second staging area, the structural limitation added was met by those references. Applicant's



remaining new limitations to claim 2 are purely functional limitations in an apparatus claim. As the device is capable of the functional behavior added in the latest amendment, the apparatus claim limitations are met per MPEP 2114. It is possible for the references to simultaneously retain the first container at the first staging area and the second container at the second staging area.

*Allowable Subject Matter*

9. Claims 14-15 are objected to as being dependent claims premised upon a rejected base claim but would be allowed if the re-written in independent form or if the limitations of an allowable claim were incorporated within the independent base claim from which this claims depend or if re-written premised upon dependence from an otherwise allowable base claim.

*Conclusion*

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.
12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Exmr. Michael E. Butler whose telephone number is (571) 272-6937.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patrick Mackey, can be reached on (571) 272-6916. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/M. E. B./

Examiner, Art Unit 3653

/Patrick H. Mackey/

Supervisory Patent Examiner, Art Unit 3653

**Search Notes (continued)****Application/Control No.**

10/678,190

**Examiner**

MICHAEL E. BUTLER

**Applicant(s)/Patent under  
Reexamination**

KELLY ET AL.

**Art Unit**

3653

**SEARCHED**

Class	Subclass	Date	Examiner
221	242	5/13/2009	MEB

**INTERFERENCE SEARCHED**

Class	Subclass	Date	Examiner

**SEARCH NOTES  
(INCLUDING SEARCH STRATEGY)**

	DATE	EXMR
East DB Search	5/13/2009	MEB